

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**SHAWN BECK,**

**Plaintiff,**

**v.**

**THE BOARD OF COUNTY  
COMMISSIONERS OF THE COUNTY  
OF LEAVENWORTH, et al.**

**Defendants.**

**CIVIL ACTION**

**No. 03-2646-CM**

**MEMORANDUM AND ORDER**

Plaintiff filed the instant action on December 18, 2003. On January 21, 2004, defendant Herbert Nye filed a Motion to Dismiss (Doc. 6), to which plaintiff responded. On March 30, 2004, both defendant Board of County Commissioners of the County of Leavenworth and Nye filed a Motion to Dismiss (Doc. 15), wherein defendants contend that this court lacks subject matter jurisdiction over this case.

Plaintiff's response to defendants' Motion to Dismiss (Doc. 15) was due on April 22, 2004. On April 27, 2004, this court ordered plaintiff to show cause, in writing, on or before May 3, 2004, why defendants' Motion to Dismiss (Doc. 15) should not be granted and further directed plaintiff to file a response to defendants' motion on or before May 3, 2004. On May 4, 2004, plaintiff's counsel filed a Motion to Withdraw (Doc. 20) and also moved for an extension of time in which to respond to defendants' Motion to Dismiss. The court granted plaintiff's request, ordering that plaintiff's response be filed by May 10, 2004. To date, plaintiff has failed to file a response to

defendants' Motion to Dismiss (Doc. 15). The court will therefore rule upon defendant's Motion to Dismiss without the benefit of a response from plaintiff.

## **I. Facts**

Plaintiff alleges that defendants discriminated against him based upon his disability. Specifically, plaintiff asserts in his complaint that he tore his right ACL on the job in December 2001. Plaintiff returned to work the following April with minimal restrictions. That same month, he applied for a position with the Sheriff's office. Plaintiff submitted to a medical examination and drug test, and on April 23, 2002, plaintiff was offered the position he sought. On April 26, 2002, an individual at the Sheriff's office informed plaintiff that plaintiff could not report to work because plaintiff has not been fully released by worker's compensation. Plaintiff brought the instant lawsuit, asserting claims under the Kansas Act Against Discrimination (KAAD), Kan. Stat. Ann. § 44-1001 *et seq.*, and the Americans with Disabilities Act (ADA), 42 U.S.C. § 12001 *et seq.*

## **II. Standards**

The court will dismiss a cause of action for failure to state a claim only when it appears beyond a doubt that the plaintiff can prove no set of facts in support of the theory of recovery that would entitle him or her to relief, *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Maher v. Durango Metals, Inc.*, 144 F.3d 1302, 1304 (10<sup>th</sup> Cir. 1998), or when an issue of law is dispositive, *Neitzke v. Williams*, 490 U.S. 319, 326 (1989). The court accepts as true all well-pleaded facts, as distinguished from conclusory allegations, *Maher*, 144 F.3d at 1304, and all reasonable inferences from those facts are viewed in favor of the plaintiff, *Witt v. Roadway Express*, 136 F.3d 1424, 1428 (10<sup>th</sup> Cir. 1998). The issue in resolving a motion such as this is not

whether the plaintiff will ultimately prevail, but whether he or she is entitled to offer evidence to support the claims. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds*, *Davis v. Scherer*, 468 U.S. 183 (1984).

### **III. Discussion**

A plaintiff must exhaust his administrative remedies before bringing suit under the ADA and KAAD. *Aramburu v. Boeing Co.*, 112 F.3d 1398, 1409 (10<sup>th</sup> Cir. 1997). The filing of a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) is a prerequisite to this court's jurisdiction. *Jones v. Runyon*, 91 F.3d 1398, 1399-1400 n.1 (10<sup>th</sup> Cir. 1996).

With respect to plaintiff's KAAD claim, plaintiff must exhaust his administrative remedies with the Kansas Human Rights Commission (KHRC) before filing a claim in this court. *Van Scoyk v. St. Mary's Assumption Parochial Sch.*, 224 Kan. 304, 306, 580 P.2d 1315 (1978). Exhaustion of administrative remedies under KAAD requires that the complaint be filed with the KHRC within six months after the alleged discriminatory act. Kan. Stat. Ann. § 44-1005(i). In the present case, the alleged discriminatory act occurred on April 26, 2002. Plaintiff did not directly file a claim with the KHRC. Rather, plaintiff's only attempt at filing a discrimination claim with any administrative agency was plaintiff's claim he filed with the EEOC on February 19, 2003, 299 days after the alleged discrimination. The EEOC then submitted plaintiff's claim to the KHRC. Because the EEOC charge does not satisfy plaintiff's obligations under KAAD, and because plaintiff failed to file his KAAD claim within six months of the alleged discrimination, the court dismisses plaintiff's KAAD claim.

The court turns to plaintiff's ADA claim. Like Title VII, an individual ordinarily must file a charge of discrimination with the EEOC within 180 days after the alleged unlawful practice occurred.

However, in deferral states, such as Kansas, an individual has 300 days to file a charge with the EEOC. A charge, however, is not deemed to be filed with the EEOC until the state agency has had sixty days to act on the charge or until the state agency has terminated its proceedings. Thus, a complainant in a deferral state must file his charge with the EEOC within 240 days of the alleged discriminatory employment practice in order to insure that his federal rights will be preserved.

*Mohasco Corp. v. Silver*, 447 U.S. 807, 814 n.16 (1980).

In this case, plaintiff never filed any claim with the KHRC. Because plaintiff never filed or attempted to file any claim with the KHRC, no proceedings before that body were ever commenced. *See Hughs v. Valley State Bank*, 26 Kan. App.2d 631, 994 P.2d 1079 (1999). Since plaintiff failed to ever file his charges with the relevant state agency, his claims are limited to those within the 240 days preceding his EEOC charge. Here, plaintiff filed his EEOC charge 299 days after the alleged discriminatory event. Accordingly, plaintiff's ADA claim will be dismissed for failure to exhaust his administrative remedies. *See Snyder v. Boeing*, 162 F. Supp. 2d 1212, 1219 (D. Kan. 2001) (dismissing ADA claim where plaintiff, who never filed claim with KHRC, failed to file charge with the EEOC within 240 days preceding alleged events of discrimination).

**IT IS THEREFORE ORDERED** that defendants' Motion to Dismiss (Doc. 15) is granted. Accordingly, defendant Herbert Nye's Motion to Dismiss (Doc. 6) is moot. This case is hereby dismissed.

Dated this 13 day of May 2004, at Kansas City, Kansas.

s/ Carlos Murguia  
**CARLOS MURGUIA**

**United States District Judge**